

**Report to the General Assembly:**

**Office of Open Records Counsel**

**and**

**Advisory Committee on Open Government**

A Report to the Governor and 107<sup>th</sup> Tennessee General Assembly

March 1, 2011



STATE OF TENNESSEE  
COMPTROLLER OF THE TREASURY  
OFFICE OF OPEN RECORDS COUNSEL  
James K. Polk State Office Building  
505 Deaderick Street, Suite 1600  
Nashville, Tennessee 37243-1402

Justin P. Wilson  
Comptroller

March 1, 2011

The Honorable Bill Haslam, Governor  
The Honorable Ron Ramsey, Lieutenant Governor and Speaker of the Senate  
The Honorable Beth Harwell, Speaker of the House of Representatives  
State Capitol  
Nashville, Tennessee 37243

Dear Governor Haslam, Lieutenant Governor Ramsey, and Speaker Harwell:

Transmitted herewith is the annual report from the Office of Open Records Counsel and the Advisory Committee on Open Government pursuant to Tennessee Code Annotated Section 8-4-603(b).

Thank you for your consideration of this report, and please do not hesitate to contact our office if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Hodge".

Elisha D. Hodge, Esq.  
Open Records Counsel

## **BACKGROUND**

The Office of Open Records Ombudsman was funded by the General Assembly for Fiscal Year 2008 and administratively attached to the Office of Comptroller of the Treasury [Item 10, Section 43, Public Chapter 603, Acts of 2007]. On July 1, 2008, Public Chapter 1179, Acts of 2008, became law. PC 1179, established the Office of Open Records Counsel (hereinafter referred to as the "OORC") and the Advisory Committee on Open Government (hereinafter referred to as "ACOG"). The office of OORC is staffed by Elisha D. Hodge, J.D., and Tanya Stoner.

On March 1, 2010, the OORC submitted a report to the Governor and the Speakers of the House and Senate. At that time the OORC had received approximately 1050 inquires and issued 16 informal advisory opinions.

## **ACOG**

The ACOG was created to provide guidance and advice for the OORC. The ACOG may review and provide written comments on proposed legislation regarding open meetings and open records laws, with the guidance and assistance of the OORC. Additionally, the ACOG and the OORC are required to provide this annual report to the General Assembly and the Governor by March 1<sup>st</sup> of each year.

The ACOG consists of seventeen (17) members, fourteen (14) of whom are appointed by the Comptroller of the Treasury from a list of three nominees submitted by each of the groups listed below. Although members are to serve four (4) year terms, the initial appointments were staggered with four (4) and two (2) year terms. The following individuals have been appointed to serve four (4) year terms on the ACOG:

Dorothy Bowles (Tennessee Coalition for Open Government)  
Frank Gibson (Tennessee Press Association)  
Chad Jenkins (Tennessee Municipal League)  
Jay West (County Officials Association of Tennessee)  
Amy Martin (Tennessee School Board Association)  
Dick Williams (Common Cause)  
Shirley Wilson (League of Women Voters)  
Thomas Gee (Tennessee Hospital Association)  
Robb S. Harvey (Tennessee Association of Broadcasters)  
Matthew Scoggins (University of Tennessee)  
Sharon Fitzgerald (Society of Professional Journalist)  
Glenn Chrisman (Tennessee Association of Chiefs of Police)  
Patrick Ray (Tennessee Sheriffs' Association)  
Fred Fields (AARP)

laws in Tennessee, to be made available to the public and to public officials” [Tenn. Code Ann. Section 8-44-109(e)];

- Providing staffing to the Advisory Committee on Open Government;
- Guiding and assisting the Advisory Committee on Open Government in reviewing and commenting on “any proposed legislation regarding the open meetings laws codified in Title 8, Chapter 44, and the open records laws codified in Title 10, Chapter 7” [Tenn. Code Ann. Section 8-4-603(a)]; and
- Reporting with the Advisory Committee on Open Government “to the general assembly and to the governor by March 1 of each year” [Tenn. Code Ann. Section 8-4-603(b)].

## **ORGANIZATION**

The office is currently staffed with an attorney and an executive secretary.

## **OPERATIONS**

The office is currently located on the 16<sup>th</sup> Floor of the James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37243. The current contact information for the office is:

Office of Open Records Counsel  
1600 James K. Polk Building  
Nashville, TN 37243-1402  
(615) 401-7892 Phone  
(866) 831-3750 Toll-free phone  
(615) 741-1551 Fax  
[open.records@tn.gov](mailto:open.records@tn.gov)



## **INQUIRIES AND ACTIVITIES**

The OORC provides advice and guidance orally and in writing to the public, representatives of state and local government, and members of the news media. All public records disputes or inquiries are addressed through phone calls and/or e-mails unless an informal advisory opinion is requested. The information below details the work of this office from March 1, 2010, (the date of the prior report of the office to the Governor and the Speakers of the House and Senate) through February 28, 2011.

Total number of inquiries: 1213

### **Breakdown of inquiries**

Citizens: 492

Media: 93

Government: 628

### **Inquiries concerning**

Public records: 1109

Open meetings: 104

### **Inquiries by topic (may be listed in several)**

Fees: 103

Retention of records: 10

General Issues regarding Public Records: 784

Inquiries regarding access to law enforcement records: 86

Inquiries regarding the applicability of specific exemptions: 126

Media Interviews: 26

Presentations: 14

Opinions Released: 7

Advisory Committee Meetings: 1

## **WEBSITE**

The enabling legislation requires the OORC to have an internet presence. (*See Attachment C*). Tenn. Code Ann. Section 8-4-601(b) requires the OORC to post to its website all informal advisory opinions that are issued. Tenn. Code Ann. Section 8-4-604(b) requires the OORC's policies and guidelines to be available on the internet. The home page for the OORC is [www.tn.gov/comptroller/openrecords/index.htm](http://www.tn.gov/comptroller/openrecords/index.htm). The informal advisory opinions are posted at [www.tn.gov/comptroller/openrecords/opinions.htm](http://www.tn.gov/comptroller/openrecords/opinions.htm). The forms, policies, and guidelines are posted at [www.tn.gov/comptroller/openrecords/forms.htm](http://www.tn.gov/comptroller/openrecords/forms.htm).

## **OPINIONS RELEASED BY THE OFFICE OF OPEN RECORDS COUNSEL SINCE MARCH 2010**

- ✓ The Release of Juvenile Witness Statements (2010)
- ✓ The Release of Information Obtained from the Department of Safety's Motor Vehicle Database (2010)
- ✓ Charter Commission Meetings (2010)
- ✓ Public Access to Board Packet Materials (2010)
- ✓ Labor Fees and the Inspection of Public Records (2010)
- ✓ Meetings and the Requirement to Record Minutes (2010)
- ✓ Public Records Generated by the Use of Personal Smartphone for City Business (2011)

### **PRESENTATIONS**

<b>2010</b>	
3/9/2010	ARMA-Chattanooga
3/11/2010	Tennessee Board of Probation and Parole
5/11/2010	Nashville School of Law Administrative Law Class
5/15/2010	Tennessee County Attorney's Association
8/12/2010	Hamilton County Commission
8/19/2010	Nashville Bar Association Government Attorney Committee
8/26/2010	Nashville School of Law Administrative Law Class
9/28/2010	Tennessee Emergency Numbers Association
10/26/2010	Tennessee Association of School Personnel Administrators
11/2/2010	Upper Cumberland 911 Dispatcher's Association
11/18/2010	Tennessee Association of School Business Officials
12/9/2010	Tennessee Municipal Electric Power Association
<b>2011</b>	
1/14/2011	Tennessee Association of County Election Officials
3/2/2011	Monroe County Government

**ATTACHMENT A**

**ADVISORY COMMITTEE ON OPEN GOVERNMENT**

<b>Organization</b>	<b>Member</b>	<b>Term End</b>	<b>Gender</b>	<b>Race</b>	<b>Grand Division</b>
Chair, Senate State and Local Government Committee	Yager, Senator Ken	Ex Officio	M	C	M & E
Chair, House State and Local Government Committee	Todd, Representative Curry	Ex Officio	M	C	W
Tennessee Attorney General and Reporter	Kleinfelter, Assist AG Janet	Ex Officio	F	C	M
Tennessee Coalition for Open Government	Bowles, Dorothy	2012	F	C	E
Tennessee Press Association	Gibson, Frank	2012	M	C	M
Tennessee Municipal League	Jenkins, Chad	2012	M	C	M
Tennessee County Services Association or <b>County Officials Association of Tennessee</b>	West, Jay	2012	M	C	M
Tennessee School Board Association	Martin, Amy	2012	F	C	E
Common Cause	Williams, Dick	2014	M	C	M
League of Women Voters	Wilson, Shirley	2014	F	C	M
Tennessee Hospital Association	Gee, Thomas	2014	M	C	W
Tennessee Association of Broadcasters	Harvey, Robb	2014	M	C	M
Tennessee Board of Regents or <b>The University of Tennessee</b>	Scoggins, Matthew	2014	M	C	E
Society of Professional Journalist	Fitzgerald, Sharon	2014	F	C	M
Tennessee Association of Chiefs of Police	Chrisman, Glenn	2014	M	C	M
Tennessee Sheriffs' Association	Ray, Patrick	2014	M	C	M

## OPEN MEETING INQUIRIES AND COMPLAINTS

1. Q: What are the requirements for noticing a special called meeting for an election commission?  
A: Discussed the fact that the notice must specifically state what is going to be discussed, be posted in places where the public will become aware of the meeting, and be posted in time to give the public notice that a meeting is going to take place.
2. Q: Can third parties tape public meeting without the permission of the governing body?  
A: Yes, as long as the taping does not disrupt the meeting; referred requestor to AG opinion 95-126.
3. Q: Is it okay to give five (5) days notice for a special called meeting?  
A: The courts do not specify how many days is adequate, but if posted in several places that make the public aware of the meeting, five (5) days is likely adequate.
4. Q: If an elected official places information on a Facebook page is that a violation of the open meetings act?  
A: No, if it is just one elected official placing information on his/her Facebook page and the page is not being used as a means for multiple members of a governing body to communicate with one another outside of a publicly noticed meeting.
5. Q: What happens when an open meetings lawsuit is filed?  
A: Provided the requestor a copy of Tenn. Code Ann. Section 8-44-105.
6. Q: Does the open meetings act require a commission to allow a reporter into space that is designated for staff only, if there is no deliberating or decision making occurring?  
A: No.
7. Q: Can a school board go into executive session to discuss land acquisition?  
A: No, only current or pending litigation with its attorney.
8. Q: Can a school board go into executive session to discuss labor negotiations or student conduct?  
A: No, however with student conduct the board needs to be mindful of the limitations of FERPA. Referred requestor to Tenn. Code Ann. Section 8-44-201.
9. Q: Is the East Tennessee Human Resources Policy Council subject to the open meetings act?  
A: It depends on whether or not the Policy Council makes decisions or recommendations for or to a governing body.
10. Q: If multiple members of a governing body get together to determine what records they possess that are responsive to a public records request, is that a violation of the open meetings act?  
A: No.
11. Q: Can a commission convene to hear an administrative report without providing public notice?  
A: Yes, but I do not recommend that. As long as they are not deliberating or making decisions, they are not having a "meeting." However, it is easy to begin to deliberate and make decisions, so I suggest that they provide notice to the public.
12. Q: A Board of Mayor and Alderman meeting was scheduled and two members did not show up which meant that there was not a quorum. The two other members decided to cancel the

meeting for lack of a quorum, but stayed around to talk to the public afterwards. Was that a violation of the open meetings act?

A: No, as long as they did not deliberate or make decisions on public business while they were talking to the public.

13. Q: Are the budget committee meetings on a governing body required to be noticed?

A: Yes, if the members are making decisions or recommendations regarding the various budgets.

14. Q: Are the county industrial board meetings required to be publicly noticed?

A: Yes, if the board is making deliberating or making decisions on public business.

15. Received a complaint that a county commission was having meetings and not providing notice to the public regarding those meetings. Notified the county commission of the complaint through a letter.

16. Q: Can the chair of a meeting call each member of the commission and discuss with him/her whether or not a meeting needs to be canceled?

A: While that may not be a violation, if the issue of cancelation of the meeting is all that is discussed, I suggest that those type issues be taken care of by staff so that the discussion does not move into areas that would constitute a violation of the open meetings act.

17. Received a complaint about a planning commission not providing adequate public notice. Notified the planning commission of the complaint through a letter.

18. Q: What constitutes adequate public notice?

A: Determined on a case by case basis and is fact specific, but the notice has to be such that interested parties are aware or should be aware of the meeting within a sufficient amount of time prior to the meeting.

19. Q: Did the election commission violate the open meetings act when multiple members spoke over the telephone regarding whether or not the current administrator should retain his job?

A: Possibly, if that was what the actual conversation was about and the members deliberated towards or made a decision on this issue.

20. Q: Can a county commissioner who is seeking a mayoral nomination solicit the vote of fellow county commissioners?

A: Emailed the *Jackson v. Hensley* opinion which says that is not a violation of the open meetings act.

21. Q: Do executive sessions where the board meets with its attorney to discuss current or pending litigation have to be noticed?

A: No, because these are not "meetings." The only thing that is permitted to take place within an executive session is the attorney advising the client on matters related to litigation and the client providing the attorney with facts related to the litigation.

22. Q: Can a county library board communicate electronically?

A: Assuming that the library board is subject to the open meetings act, no they are not allowed to hold meetings electronically based upon Tenn. Code Ann. Section 8-44-108 and 109.

23. Q: Do the board members for a housing authority have to comply with the open meetings act?

A: Yes.

24. Q: When do minutes have to be taken?  
A: When there is a meeting according to Tenn. Code Ann. Section 8-44-104, so if members of a governing body are deliberating towards or making decisions on public business, there needs to be minutes recorded.
25. Q: Is the Economic Development Council of a local chamber of commerce subject to the open meetings act?  
A: No. Chambers of Commerce are not subject to the open meetings act.
26. Q: Is the open meetings act triggered when multiple members of a governing body meet and receive information only?  
A: No, it is only triggered when they deliberate towards or make a decision on the information that they have received.
27. Q: If a citizen wanted to have a decision made by a commission declared null and void because the commission violated the open meetings act, what would have to happen?  
A: Discussed the fact that a lawsuit would have to be filed in accordance with Tenn. Code Ann. Section 8-44-105 and 106.
28. Q: Are the meetings of a specific non-profit open to the public?  
A: No because they are not the functional equivalent of a governmental entity nor do they meet the requirements in Tenn. Code Ann. Section 8-44-102(b)(1)(E).
29. Q: Can a public entity prevent someone from attending a public meeting?  
A: Absent some type of restraining order, no. Public meetings are open to the public, but an individual attending the meeting can be asked to leave if he/she is disrupting the meeting.
30. Q: Are the meetings of the boards of directors for condominium boards subject to the open meetings act?  
A: No, but they are subject to the provisions in Tenn. Code Ann. Section 66-27-401 et seq.
31. Q: What is required to be in the minutes of a meeting?  
A: Discussed Tenn. Code Ann. Section 8-44-104 which says that the minutes shall include but not be limited to a record of persons present, all motions, proposals and resolutions offered, the results of any votes taken, and a record of individual votes in the event of roll call.
32. Q: What are the notice requirements for a special called meeting of a planning commission?  
A: Discussed the Englewood opinion and the fact that the notice must be specific, must be posted in locations where the public is likely to see it and must be posted within a sufficient amount of time prior to the meeting, but there is no specific formula.
33. Q: Are public notices required to be placed in newspapers of general circulation?  
A: Only if the statute relative to a particular entity requires it.
34. Q: What is required to be in the minutes of a meeting?  
A: Discussed Tenn. Code Ann. Section 8-44-104 which says that the minutes shall include but not be limited to a record of persons present, all motions, proposals and resolutions offered, the results of any votes taken, and a record of individual votes in the event of roll call.
35. Discussed at length various notice requirements that are found within a county's charter and a city's municipal code for planning commission meetings and board of zoning appeal meetings.
36. Q: If two or more members of a governing body convene, does notice have to be provided to the public?  
A: Only if they are having a meeting, which statutorily means they are deliberating towards or

making a decision related to public business.

37. A complaint was made that a school board met at a retreat, but it turns out that notice was provided to the public in the newspaper, it just did not say that the public was welcome to attend; however none of the notices for the school board ever say that the public is welcome to attend.
38. Q: An attorney for a city council called and said that the members had violated the open meetings act by deliberating through emails. Asked how they could cure the violation.  
A: Referred the requestor to *Neese v. Paris Special School District* which describes the board curing a violation by new and substantial reconsideration of the issue at an adequately noticed public meeting.
39. A complaint was filed against various boards and commissions within a city who hold work sessions where deliberations take place and occasionally votes are taken, but there are no minutes recorded for these meetings. The attorney for the city was notified of the complaint through a call and a letter.
40. Q: Why do minutes have to be recorded for work sessions?  
A: If deliberations occur or decisions are made by multiple members of a governing body during a work session, Tenn. Code Ann. Section 8-44-104 requires minutes to be recorded.
41. A complaint was filed against the board of a housing authority for meeting without providing notice to the public or recording minutes. The chairman of the board was notified through a call and a letter.
42. Q: Are work sessions any different than meetings?  
A: If deliberation towards or decisions are made on public business, then no, there is no difference except for what the gathering is being called.
43. Q: Where do notices for meetings have to be posted?  
A: Unless there is a specific location identified in the statute or in the code, charter or by-laws for an entity, the notice can be posted any place that will allow the public to see the notice.
44. Q: Can an entity stop posting notice in the newspaper and start posting notice on bulletin boards around town because of budgetary issues?  
A: As long as the entity makes the public aware ahead of time that the place that notice is posted is going to change, then there does not appear to be a problem, unless the entity is legally required to post in the newspaper.
45. Q: Is a city's Civil Service Board subject to the open meetings act?  
A: Yes; emailed the requestor *Lakeway Publishers, Inc. v. Civil Service Board for the City of Morristown*.
46. Q: Can multiple members of a governing body meet with a civic organization?  
A: Yes, as long as they do not deliberate towards or make any decisions on public business during this meeting.
47. Q: Is it sufficient for a county library board to post notice of its meetings on the library website?  
A: Assuming that the library board is subject to the open meetings act, no it is not sufficient for the only notice of the meetings to be posted on a website.
48. Q: Is it sufficient for the notices for state level board meetings to only be posted on a state website?  
A: No, because everyone does not have the ability to access a computer and access the website.



49. Q: Can a utility district commissioner participate in a meeting telephonically?  
A: No pursuant to Tenn. Code Ann. Section 8-44-108.
50. Q: Can a county commissioner who is seeking a mayoral nomination solicit the vote of fellow county commissioners?  
A: Emailed the *Jackson v. Hensley* opinion which says that is not a violation of the open meetings act.
51. Q: Is it sufficient to provide the media with notice of meetings and not post anywhere else for the public?  
A: If you can ensure that the media is going to run the notice that is likely sufficient, but if there is no guarantee that the notice will be run, notice should be posted elsewhere.
52. Q: Are charter commissions subject to the open meetings act?  
A: Yes.
53. Q: Can two election commissioners go and make a factual presentation on an issue to a third party?  
A: Yes, as long as they are not using the presentation as a means of deliberating towards or making decisions on public business.
54. Q: Is posting in Legislative Plaza and on a state agency's website sufficient?  
A: Yes if that is going to reach interested parties, but I would suggest that at the meeting of the entity, they make it publicly known where notices are posted for meetings.
55. Q: Does a city council have to allow a citizen to speak at a meeting?  
A: Not pursuant to the open meetings act, but there could be another specific provision within statute, the municipal code, city charter or the council's by-laws that requires it.
56. Q: Is a policy committee established pursuant to Tenn. Code Ann. Section 13-26-103 subject to the open meetings act?  
A: Yes.
57. Q: Are meetings of a county Industrial Board subject to the open meetings act?  
A: Yes.
58. Q: Are county commission budget committee meetings required to be noticed?  
A: Yes.
59. Q: Is a meeting held by a state department and members of school staff from throughout the state required to be open to the public?  
A: No, the open meetings act is not triggered because there is no meeting of multiple members of a governing body.
60. Q: Election commission noticed a special called meeting for a date certain and they want to meet that day for purposes of rescheduling the meeting for the next day. If they do that and provide no additional notice is that ok?  
A: No, because the requirements for special called meetings are much stricter than for regularly called meetings and this is not sufficient. Referred the requestor to the *Englewood* opinion.
61. Q: Is the board orientation for a hospital authority required to be noticed?  
A: No as long as there is no deliberations towards or decisions made on public business during the orientation.



62. A complaint was made regarding the possible violation of the open meetings act by an electric power board. The attorney for the board and the board was notified of the complaint through a letter.
63. Q: What are the notice parameters for a special called meeting being held county commission?  
A: Discussed Tenn. Code Ann. Section 5-5-105.
64. Q: If staff wants to brief utility district commissioners on a situation involving an employee that was injured on the job, does that have to be done in a public meeting?  
A: No, unless the board is going to have to take some sort of action on the report. However, if the request for the briefing was made at a public meeting, the issue should at least be minimally addressed at a public meeting.
65. Q: Are charter commissions subject to the open meetings act?  
A: Yes.
66. Q: Are the meetings of a specific non-profit open to the public?  
A: No because they are not the functional equivalent of a governmental entity nor do they meet the requirements in Tenn. Code Ann. Section 8-44-102(b)(1)(E).
67. Q: Can a county commissioner who is seeking a mayoral nomination solicit the vote of fellow county commissioners?  
A: Emailed the *Jackson v. Hensley* opinion which says that is not a violation of the open meetings act.
68. A reporter requested that all the information that this office had on the open meetings act be emailed to him.
69. Q: Can a county commissioner who is seeking a mayoral nomination solicit the vote of fellow county commissioners?  
A: Emailed the *Jackson v. Hensley* opinion which says that is not a violation of the open meetings act.
70. Q: At two separate special called meetings, election commissioners discussed issues that were not in the notice. Was this a violation of the open meetings act?  
A: Anytime public business is discussed at a special called meeting and that issue was not placed within the notice for the meeting, a violation has occurred. Referred the requestor to Tenn. Code Ann. 2-1-113 and the *Englewood* opinion.
71. Q: What can be discussed at a special called meeting?  
A: Only those issues that are specifically mentioned in the notice. Referred requestor to the *Englewood* opinion.
72. Q: Is a task force that is being created that has multiple members of two governing bodies and other elected officials subject to the open meetings act?  
A: Yes, assuming that the task force is going to be deliberating and making decisions on public business that will effect and ultimately come before the county commission and city council for a vote.
73. Q: If commission members have dinner together is that a violation of the open meetings act?  
A: No, as long as they are not deliberating towards or making decisions on public business while they are at dinner.
74. Q: Election commission chairman called to report that the commission had violated the open meetings act and wanted to know what to do to cure the violation.  
A: Forwarded the *Neese v. Paris Special School District* opinion and told the requestor that the

commission needed to have new and substantial reconsideration of the issue in an adequately noticed public meeting.

75. Q: Is a city council required to record minutes of its work sessions?  
A: Yes, if the council is deliberating towards or making decisions on public business at the work sessions.
76. Q: Do the minutes of an election commission meeting have to be a transcript?  
A: No, the minutes only have to include those things described in Tenn. Code Ann. Section 8-44- 104.
77. Q: What is the difference between the notice requirements for a special called election commission meeting and a regularly scheduled meeting?  
A: Regularly scheduled meetings are required to be noticed in accordance with Tenn. Code Ann. Section 2-1-113 and special called meetings are required to be noticed in accordance with the *Englewood* opinion.
78. Q: Is there a violation of the open meetings act if the Board of Mayor and Alderman meets and disperses when no quorum is present but stays and talks with citizens after the meeting is canceled?  
A: No, if the members were not deliberating or making decisions on issues while they are talking to citizens.
79. Q: When is a board required to have minutes?  
A: Anytime that multiple members of the board deliberate towards or make decisions on public business.
80. Q: Are public hearings required to be publicly noticed?  
A: Yes
81. Q: Can two election commissioner go and meet with a third party to present factual information related to an election process being considered?  
A: Yes, as long as all that is going to be presented is factual information, but I did discuss what could potentially occur if they did start deliberating or making decisions on public business.
82. Q: If notice is posted six days before a special called meeting, is that enough time?  
A: Yes.
83. Q: Can members of the city council, the county commission, and the school board meet with a representative of a federal agency for a briefing without having to post notice?  
A: Yes, as long as the members do not use the briefing as an opportunity to deliberate or make decisions on public issues.
84. Q: When can an election commission go into executive session?  
A: Only when the members are discussing current or pending litigation with its attorney.
85. Q: Can a city council have a special called meeting and what are the parameters?  
A: Discussed the *Englewood* opinion but also looked at the language in the city's charter.
86. Q: An election commission needs to hold a special called meeting because a candidate had been disqualified today and the ballots need to be printed within the next three days. Is three days adequate notice?  
A: The court looks to the facts and circumstances in order to determine whether notice is adequate and three days is likely acceptable, but nothing less.

87. Q: Can an election commission have a special called meeting with less than 24 hours notice to the public?  
A: Not absent emergency circumstances. In *Englewood* there was 48 hours notice and the court said that was not enough.
88. Q: Can a candidate for an administrator position be required to leave a public meeting while the commissioners deliberate on who to hire?  
A: No.
89. Q: Is the general assembly subject to the open meetings act?  
A: No.
90. Q: If an election commission posts notice on a Thursday, can it hold a special called meeting on Monday?  
A: That is likely enough time if they post in as many public places as possible.
91. Q: What constitutes promptly for purposes of recording minutes?  
A: There is no statutory definition, so as soon as possible under the circumstances.
92. Q: Where on a state entity's website should public notices be placed?  
A: If possible, on the homepage so that people do not have to search for the notices.
93. A complaint was filed alleging that the commissioners of a utility district were holding meetings privately. The commissioners were notified about the complaint by phone and letter.
94. Q: What are the notice and meeting requirements for audit committees?  
A: Reviewed with the requestor Tenn. Code Ann. Section 9-3-405 and 8-44-103.
95. Q: What are the notice requirements for a state commission meeting?  
A: Emailed the requestor a copy of Tenn. Code Ann. Section 8-44-102 and a copy of the *Dorrier v. Dark* opinion.
96. Q: Does a board of directors have to post notice for an executive session where the board is seeking advice from its attorney related to current or pending litigation?  
A: No, because that alone does not constitute a meeting. However, if the members want to deliberate towards or make a decision based upon the advice received, notice would have to be posted.
97. Q: Is the personnel committee that makes recommendations to the Board of Mayor and Alderman subject to the open meetings act?  
A: Yes.
98. Q: Can an executive session be held by a school board without publishing notice?  
A: Yes, referred the requestor to the *Smith County Educational Association v. Anderson* opinion.
99. Received a complaint regarding a possible open meetings violation by an electric power board. Notified the electric power board of the complaint through a letter.
100. Q: Is it a violation open the open meetings act for a commissioner to meet with a department head outside of a publicly noticed meeting?  
A: No, the open meetings act is not triggered because there is only one member of a governing body involved.
101. Q: Do the provisions of a city charter relative to how a meeting is to be conducted trump Robert's Rules of Order?

A: The city is required to follow the provisions within its charter, but is not required to operate in accordance with Robert's Rules.

102. Q: Members of the state legislature met at a Christian bookstore yesterday in a meeting that was not open to the public. Did they violate the open meetings act?

A: No because the General Assembly is not subject to the open meetings act.

103. Q: Members of the state legislature met at a Christian bookstore yesterday in a meeting that was not open to the public. Did they violate the open meetings act?

A: No because the General Assembly is not subject to the open meetings act.

104. Received a complaint about a possible violation of the open meetings act by a state level commission. Notified the attorney for the commission and the Attorney General's office of the complaint.

# Tennessee Comptroller of the Treasury Office of Open Records Counsel



Elisha Hodge, JD  
Open Records  
Counsel

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## Contact Us:

Office of Open Records Counsel  
505 Deaderick Street, Suite 1600  
James K. Polk Building  
Nashville, Tennessee 37243-1402  
Phone: (615) 401-7891  
Toll free phone: 1-866-831-3750  
Fax: (615) 741-1551  
[open.records@tn.gov](mailto:open.records@tn.gov)

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